

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 1:15-MJ-03673-LF
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Albuquerque, New Mexico
)	
DAVON LYMON,)	Tuesday, October 27, 2015
)	(10:20 a.m. to 10:50 a.m.)
Defendant.)	

PRELIMINARY / DETENTION HEARING

BEFORE THE HONORABLE KIRTAN KHALSA,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	JACOB WISHARD, ESQ. Office of the U.S. Attorney District of New Mexico P.O. Box 607 Albuquerque, NM 87103
For Defendant:	MARC H. ROBERT, ESQ. Office of the Federal Public Defender First State Bank Building 111 Lomas Boulevard NW, Suite 501 Albuquerque, NM 87102
U.S. Probation/Pretrial:	A. Candelaria
Court Reporter:	Recorded; Liberty - Gila
Clerk:	E. Hernandez
Transcribed by:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

INDEX

<u>GOVERNMENT'S WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-----------------------------	---------------	--------------	-----------------	----------------

DEREK WRIGHT		4	17	
--------------	--	---	----	--

<u>RULING RE PROBABLE CAUSE</u>	19			
---------------------------------	----	--	--	--

ARGUMENT RE DETENTION

BY MR. ROBERT	19/22			
---------------	-------	--	--	--

BY MR. WISHARD	21			
----------------	----	--	--	--

<u>RULING RE DETENTION</u>	23			
----------------------------	----	--	--	--

1 Albuquerque, New Mexico; Tuesday, October 27, 2015; 10:20 a.m.

2 Call to Order

3 **THE CLERK:** The *United States of America versus Davon*
4 *Lymon*.

5 **MR. WISHARD:** Jake Wishard for the United States.

6 **MR. ROBERT:** Good morning, your Honor, Marc Robert
7 for Mr. Lymon who is present in custody. We are prepared to
8 proceed with the Preliminary hearing.

9 **THE COURT:** Okay, good morning. Good morning,
10 Mr. Lymon.

11 **THE DEFENDANT:** Good morning, your Honor.

12 **THE COURT:** All right. I guess we will proceed at
13 this time. Are you ready to proceed?

14 **MR. WISHARD:** Yes, your Honor. My witness is here.
15 I -- if the Court will allow us I'd like you just to adopt his
16 Probable Cause Statement in the Criminal Complaint and then
17 pass the witness to Mr. Robert. If the Court wishes me to walk
18 him through the Complaint on a Direct exam I'm happy to do that
19 as well.

20 **THE COURT:** Mr. Robert?

21 **MR. ROBERT:** Either way is fine with me, your Honor.

22 **THE COURT:** Okay. Well, if there is no objection to
23 the Court allowing the Government to proffer the Probable Cause
24 statement that's attached to the Complaint and you proceeding
25 directly to Cross Examination, I'm prepared to adopt that.

1 **MR. ROBERT:** No objection to that procedure, your
2 Honor.

3 **THE COURT:** Okay.

4 **MR. WISHARD:** The United States calls Task Force
5 Officer Derek Wright.

6 **THE CLERK:** Please raise your right hand.

7 **DEREK WRIGHT, GOVERNMENT'S WITNESS, SWORN**

8 **THE WITNESS:** Yes, ma'am.

9 **THE CLERK:** Can you please have a seat, state your
10 name and spell your last name for the record?

11 **THE WITNESS:** My name is Derek Wright, the spelling
12 of the last name W-R-I-G-H-T.

13 **CROSS EXAMINATION**

14 **BY MR. ROBERT:**

15 Q Tell us what you do for a living?

16 A I am a police officer with the Albuquerque Police
17 Department. I have been working there since January of 2006.
18 I have been assigned to the ATF Task Force for a little over
19 three years now.

20 Q All right. And since we -- we're going to do this by way
21 of a proffer, basically your Direct Examination will have been
22 the Probable Cause Statement that's been filed in the Court
23 already.

24 You are the person who signed and swore to this
25 Affidavit?

1 A Yes, sir.

2 Q Would you tell me a little bit about how you became
3 involved in this case?

4 A The evening of October 21st I was notified by phone that
5 there was an officer that had been shot in the southeast area
6 of Albuquerque. I responded to that area, as well as numerous
7 other officers. I was near Eubank and Lomas for an extended
8 period of time.

9 The local SWAT teams were all conducting their
10 searches and we were all there just in case they needed us for
11 -- to check other locations or what had happened, and shortly
12 after, I guess it was midnight, I was made aware that an arrest
13 had been made and I responded to the area of Central and Eubank
14 where I was advised the subject that was in custody was
15 Mr. Lymon.

16 I conducted a Criminal History query, found out he
17 does have two felony convictions. The firearm was recovered in
18 a block -- about a block and a half north of where the shooting
19 had occurred, and we queried and that firearm was found to not
20 have been manufactured in New Mexico affecting interstate
21 commerce. He is a convicted felon.

22 When Mr. Lymon was taken into custody he was still
23 wearing a handcuff on his left wrist which, after viewing the
24 lapel camera video, Mr. -- the subject that had been arrested
25 by Officer Webster before being shot was handcuffed on his left

1 wrist, and I then completed a Criminal Complaint against him.

2 Q All right. You were not involved in the processes by
3 which Mr. Lymon was taken into custody?

4 In other words, you weren't part of the teams that
5 were trying to locate him and place him in custody?

6 A Correct, I was not.

7 Q Were you a part of any of the effort to locate the
8 firearm?

9 A I was not, no.

10 Q All right. Have you been a part of any of the examination
11 or any testing that was done with respect to the firearm?

12 A No, sir.

13 **THE COURT:** I'm sorry, can I -- I need you-all to
14 keep your voices down. Could you please move over to that end
15 of the pew and keep your voices down. Thank you. All right,
16 go ahead, I apologize.

17 **MR. ROBERT:** No problem, your Honor. Thank you.

18 **BY MR. ROBERT:**

19 Q You mentioned a lapel cam. This would have been Officer
20 Webster's lapel camera?

21 A Yes, sir.

22 Q Were there any other recordings that you are aware of that
23 were made relevant to the events of that evening?

24 A There were numerous recordings made by officers either
25 responding, there was the helicopter video from their infrared

1 camera. The helicopter, while traveling around, did observe a
2 male subject jumping over fences and into the area. The SWAT
3 teams came in and located the subject they had seen, which was
4 Mr. Lymon.

5 Q All right, do you know if there was -- what vehicle was
6 Officer Webster driving? Was it a car or motorcycle?

7 A Officer Webster?

8 Q Yes.

9 A He was in a marked patrol car.

10 Q Okay. Was there a dash cam in that car?

11 A I don't believe there's dash cam in there, sir. I haven't
12 heard anything about that.

13 Q All right. You said that the firearm was located about a
14 block and a half away from where the shooting occurred?

15 A Well, just -- just north of Central and -- Eubank and
16 Central in the Walgreens, 10300 Central.

17 Q Okay.

18 A Just north of that is a street called "Glorieta" runs
19 north-south, and it was located in the 100 block of Glorieta in
20 a vacant lot.

21 Q In a vacant lot. Are there any structures on that lot at
22 all?

23 A I -- I was not there to collect it; I was advised it was a
24 vacant lot.

25 Q Okay.

1 A There are some -- there's a gas station on the east side
2 of Glorieta at Central. There are some houses as you go
3 farther north. There's sporadic lots that are available.

4 Q All right. Okay. I'd like to ask a little bit about the
5 timing of things.

6 When did the call come in that there had been an
7 incident?

8 A Shortly before 8:00 o'clock.

9 Q Okay. When did you arrive on the scene?

10 A It must have been 9:00 -- 9:00 o'clock, 9:30.

11 Q Okay. Do you know when -- you talked about aerial
12 surveillance. When did that begin, do you know?

13 A I do not know when the helicopter arrived or was called
14 out yet, I'm still gathering information from the police
15 department as to all of their dispatches and things like that.

16 Q Was it minutes or hours, do you know?

17 A It probably was not hours. I'm sure they were notified
18 within minutes that they needed to get in the air and help
19 assist searching for the subject.

20 Q I am assuming that there are recordings from the
21 helicopter that would probably include time notations, is that
22 right?

23 A Yes, sir.

24 Q Okay. But you're not aware of the time at which those
25 things took place?

1 A No, I do not know.

2 Q All right. How long after the incident was Mr. Lymon
3 taken into custody?

4 A Probably had been four hours. I think he was finally
5 taken into custody between 11:30 and 12:30, so three and a
6 half, four and a half hours, somewhere in there, sir.

7 Q What was the location in which that occurred?

8 A 120 Espejo northeast, which is about a block over to the
9 west, excuse me, from where the firearm was recovered.

10 Q All right. I want to talk a little bit about the firearm.
11 One of the things that's included in the Statement of Probable
12 Cause is that the gun was not test fired --

13 A Right.

14 Q -- because ballistics were still pending?

15 A Correct.

16 Q Were there any other tests that were performed on the
17 firearm obviously pending the ballistics study?

18 A Right. No, there was no other tests performed. Some of
19 the ammunition that was recovered at the scene was three rounds
20 of Winchester and three rounds of Perfecta. Those rounds of
21 ammunition had been expended, they had been fired.

22 When the firearm was recovered they found a round of
23 Perfecta ammunition in the chamber which is the same ammunition
24 that was recovered at the scene.

25 Perfecta is not a real common round of ammunition,

1 it's fairly new so we don't run into it a lot.

2 Q All right. But, obviously, we don't have results from
3 ballistics?

4 A Correct.

5 Q So the only thing we know is that it's the same brand that
6 you -- of which you found three shells at the site of the
7 shooting and there was one of the same brand in the firearm --
8 in the magazine?

9 A Correct.

10 Q How many rounds were in the firearm including the
11 magazine?

12 A I did not manipulate it. We were letting -- or no one
13 manipulated it on the scene, we let the criminalistics folks
14 from A.P.D. take care of that part.

15 Q Have you been keeping in touch with the progress of the
16 investigation?

17 A I have and they are still just going through all of their
18 items. I have made numerous requests, I'm just waiting for the
19 information to come.

20 Q All right, so you have received no information --

21 A Correct.

22 Q -- about any of those things with respect to the firearm?

23 A Correct, I have not.

24 Q Okay. Do you know if the firearm was tested for
25 fingerprints?

1 A I do not know.

2 Q Okay. That would be something, I'm sure, you're going to
3 continue to follow up on?

4 A Yes.

5 Q All right. Do you know if any tests were performed on
6 Mr. Lymon?

7 A Yes. I obtained a search warrant for Mr. Lymon's DNA and
8 it was served when he was released from the hospital on
9 Saturday at the Albuquerque Police Station at the main. They
10 -- a field investigator arrived. I was there and I showed him
11 his warrant. They obtained the buccal swab samples and they
12 were transferred to the Criminal Crime Lab for analysis.

13 Q All right. How about gunshot residue? Was that tested?

14 A I don't believe so. I have not heard if they did.

15 Q Okay. Is that something that's still done at all by
16 A.P.D. or ATF?

17 A I have not heard of it being done.

18 Q Okay. You mentioned that there was a lapel camera
19 recording from the officer's lapel cam.

20 Was there anything -- have you viewed that recording?

21 A Yes, sir.

22 Q Is there anything on that recording that shows the face or
23 any other identifying characteristics of the person that was
24 involved in that incident?

25 A Only that the left hand was handcuffed. There is -- the

1 subject is wearing a helmet, Mr. Lymon, and there's a female in
2 the back seat and she had fled. The lapel camera states -- the
3 officer is saying "There's the male subject running north" when
4 they arrived, meaning north -- they were north of Central into
5 the neighborhood where the firearm was recovered and Mr. Lymon
6 was arrested, but you could not see a face or anything like
7 that.

8 Q Okay. How much of the -- of that subject is visible on
9 the lapel cam?

10 A Of?

11 Q Of the person who was involved in the incident?

12 A Oh, probably from midriff up.

13 Q Do you know how long after the call went out from Officer
14 Webster until other officers arrived on the scene?

15 A Probably two minutes I would estimate.

16 Q And your testimony is that some of those officers observed
17 a subject running away from the scene of the incident?

18 A Correct, I could see them and hear them on the lapel
19 camera pointing north as Officer Webster was laying on the
20 ground. His lapel camera is looking up and there is an officer
21 on his radio calling out "The subject is running north" and
22 then they're making radio dispatch transmissions.

23 Q All right. I'd like to ask a little bit about the
24 handcuff.

25 You indicated that, of course, as you just said, the

1 lapel cam indicated that there was a handcuff on the subject at
2 the scene of the shooting.

3 A Correct.

4 Q And that there was a handcuff that was found on Mr. Lymon
5 when he was arrested.

6 Is there any way of identifying a pair of handcuffs
7 within the great number of handcuffs that's available to
8 A.P.D.?

9 A There -- the Peerless handcuffs, apparently they found
10 Peerless handcuffs, I was advised, and they have serial
11 numbers. The serial numbers from the manufacturer are sent to
12 various, you know, outlets where you can buy them. This
13 specific set that was located -- or found to have been
14 transferred to Neve's, it's like a police store you can buy
15 things out of above San Mateo.

16 This handcuff had gone to Neve's, and this
17 information just came out yesterday from the police department,
18 and from there we're still determining if it was in a lot of
19 handcuffs that was transferred to the Albuquerque Police
20 Department or not.

21 Q Okay. So does A.P.D. buy handcuffs from Neve's and other
22 local outlets?

23 A Yes, sir.

24 Q Okay.

25 A And officers buy their own as well.

1 Q All right. Within A.P.D. is there a way of identifying a
2 pair of handcuffs as having been issued to a particular
3 officer?

4 A No, they're no longer -- they don't keep the serial
5 numbers.

6 Q Okay, so there is no way of knowing who that particular
7 serial number went to within A.P.D.?

8 A Correct.

9 Q All right. One of the things that's mentioned in the
10 Statement of Probable Cause is that a perimeter was established
11 once enough officers got there to do that?

12 A Correct.

13 Q Could you describe the outline of the perimeter for us?

14 A It's north of -- from Central north, probably two blocks,
15 I would imagine, to Chico, and then from Eubank five blocks
16 west. I don't know what the fifth street west of Eubank is.

17 Q How do you maintain a perimeter that size? That's a lot
18 of real estate.

19 A There's officers that responded from all of the local
20 agencies, as well as different area commands as soon as the
21 call went out, and they sit on every corner of every block.

22 Q All right.

23 A And --

24 Q Are you aware, based on your review of whatever you have
25 reviewed in this case, how long it took A.P.D. or all of the

1 law enforcement responders to establish that perimeter?

2 A I don't know that time, I know it was very quickly that it
3 was established. That's what I have been told, it was -- all I
4 have been told is that it was set up right away.

5 Q Okay. That seems like it would take a while to assemble
6 the necessary personnel to do it. I mean, it wouldn't happen
7 within two minutes of the call going out, I would say maybe
8 within 30 minutes?

9 A It would be done faster than that.

10 Q Okay.

11 A These officers do it every day. They're setting up
12 perimeters in different area commands, they know where to go
13 and what to do.

14 Q All right. Can you tell us anything about the condition
15 of the officer?

16 A Currently he's still in critical condition, they are
17 stating he still is stable.

18 **MR. ROBERT:** Your Honor, could I have a moment,
19 please?

20 **(Pause)**

21 Q Do you know whether there was any video recording or any
22 other kind of recording that was collected from businesses or
23 other possible sources of video within the area of the
24 incident?

25 A I was told the Walgreens video had -- they had a camera on

1 the southeast corner of the building and it's pointed to the
2 north and east, which is where Officer Webster conducted the
3 traffic stop. And that video apparently has some obstructed
4 views. I've requested that as well and have not yet received
5 it.

6 Q Okay. Would it go directly to you or to somebody else in
7 APD?

8 A It would -- APD would get it, and then I would have to
9 gather it from them.

10 Q All right. Do you know of any other source of video? Are
11 there any other businesses or even governmental city cameras
12 anywhere within the vicinity of all of this happening?

13 A I had asked. There is a camera on the southeast corner of
14 Eubank and Central that's, like, a DOT street camera up in the
15 air, and I was told it does not record; it's only a live feed.
16 But that is all I am aware of.

17 Q Who monitors that live feed; do you know?

18 A I have no idea, sir.

19 **MR. ROBERT:** All right.

20 That's all, your Honor. Thank you. I'll pass the
21 witness.

22 **THE COURT:** All right.

23 //

24 //

25 //

1 **REDIRECT EXAMINATION**

2 **BY MR. WISHARD:**

3 Q Officer Wright, after the defendant was arrested, did he
4 make any statements you're aware of?

5 A Well, when I transferred Mr. Lyman to court yesterday
6 morning for his initial appearance, while in the back seat of
7 the patrol car, we were traveling southbound on I-20 -- 25 at
8 Paseo, and he did ask myself and Task Force Officer Hernandez
9 how the officer was doing.

10 Q Did he make any statements on Saturday when he was
11 released from the hospital?

12 A He made a statement to the -- to -- after his DNA had been
13 collected, the two uniformed officers, as we were going to get
14 ready to transport him, were in the interview room, and
15 Mr. Lyman asked how the officer was doing.

16 Q All right.

17 A Something to that effect.

18 **MR. WISHARD:** Thank you.

19 **THE COURT:** Do you want to make any argument?

20 **MR. ROBERT:** There are gaps in this. It was several
21 hours between the time of the shooting and the time that
22 Mr. Lyman was apprehended. Obviously, the handcuff is an
23 issue, but because of the lack of the ability to trace it from
24 one office to -- from the source to the officer to this
25 incident, it's -- I think raises at least a question mark about

1 the providence of the handcuff.

2 We don't have any information that ties Mr. Lyman to
3 the handgun other than that it was found within some blocks of
4 the vicinity in which the shooting took place and the vicinity
5 in which hours later Mr. Lyman was apprehended. We don't have
6 the results of any testing, and we don't know very much about
7 the gun at all. In other words, was the magazine full? Was it
8 not? Was there any indication that the gun had been discharged
9 recently? Because I understand that's something that can be
10 tested for as well.

11 I recognize that probable cause is a low standard,
12 your Honor, but I do believe that there are significant gaps in
13 the knowledge that we have about this case at this time. Those
14 gaps may be filled at some point, but the answers to those
15 questions remain open. And I would ask your Honor to consider
16 that in determining whether there is probable cause.

17 **THE COURT:** Okay. All right. Well, I've
18 considered -- and you're excused, by the way.

19 **THE WITNESS:** Thank you.

20 **THE COURT:** Any objection to me excusing the officer?

21 **MR. WISHARD:** No, your Honor. Thank you.

22 **MR. ROBERT:** No, your Honor.

23 **THE COURT:** Okay.

24 (Witness stepped down)

25 //

1 **THE COURT:** All right. Well, I have considered
2 Officer Wright's testimony today, as well as his probable cause
3 statement, because the defense has agreed to accept that as a
4 proffer for the Court's consideration of probable cause. And I
5 find that based on all of the information before me that there
6 is probable cause to support the charge in the criminal
7 complaint. As, Mr. Robert, you aptly recognized, the probable
8 cause standard is quite different from the proof at a criminal
9 trial, and there is probable cause based on all of the evidence
10 that supports the charge in the criminal complaint against
11 Mr. Lyman.

12 So, having probable cause -- having found probable
13 cause to support the charge in the criminal complaint, do you
14 wish to proceed now to the detention hearing?

15 **MR. ROBERT:** Yes, your Honor.

16 **MR. WISHARD:** Yes, your Honor.

17 **MR. ROBERT:** Your Honor, I've received the Pretrial
18 Services report, which consists of a listing of criminal
19 history. One glaring thing about that history is that the
20 majority of the things reflected on that history are nolle
21 prosequi or dismissed. There is -- there are several cases
22 which have either been dismissed or are currently pending that
23 arise from the same incident on December 14th of last year. I
24 know that this is a matter -- let's see; there are -- one, two,
25 three -- four different cases that relate back to that date,

1 all of which have been dismissed. One of the -- one of the
2 entries reflects that the case is to be presented to the grand
3 jury, but after nearly a year, obviously, that hasn't happened
4 yet.

5 The point is that there is a fairly limited criminal
6 history. Obviously, there is a conviction of significance back
7 in 2001 for which Mr. Lyman served a significant time in the
8 Department of Corrections and was paroled in May of 2011, four
9 years ago. There is nothing in that criminal history that
10 suggests that Mr. Lyman is a flight risk.

11 There -- obviously, the nature of the current
12 offense -- well, the current offense charged is felon in
13 possession of a firearm. Although the back story on this
14 matter is -- is alarming, the charge here is felon in
15 possession of a firearm. And, so, the nature of the current
16 offense, notwithstanding other allegations, which may or may
17 not yet be presented against Mr. Lyman, is relatively minor.
18 He faces a 10-year maximum penalty on that charge.

19 Again, the criminal history does not suggest a risk
20 of flight. And the danger, then, is limited to essentially
21 what is alleged in a broader sense in this whole context. I
22 would submit, your Honor, that release to a halfway house could
23 accommodate any concerns about -- about flight risk and about
24 danger to the community. Being placed in a structured
25 environment, being required to follow the rules of the halfway

1 house, and abiding by whatever other conditions the Court
2 imposes I believe would adequately resolve any concern that the
3 Court might have with respect to flight risk or danger, and I
4 would ask your Honor to consider releasing Mr. Lyman to
5 La Pasada.

6 **THE COURT:** Does the Government wish to be heard?

7 **MR. WISHARD:** Yes, your Honor. Thank you.

8 Your Honor, there are a dearth of convictions, but
9 there are many, many arrests. In fact, every year of the
10 defendant's life from the age of 13 to present, every single
11 year and sometimes multiple times a year, he has come into
12 contact with and been arrested by law enforcement. The only
13 gap in his criminal history was the 10 years he spent in the
14 New Mexico Department of Corrections.

15 Also concerning is there are two instances, one in
16 which he was charged with escape and one in which he failed to
17 appear for a court sentencing -- or a court hearing. We don't
18 have the details on that.

19 Finally, your Honor, after his release from prison
20 and beginning in the year 2012, the violence and frequency of
21 his offenses has increased, and it crescendoed last Wednesday
22 when he attempted the murder of a police officer here in
23 Albuquerque. While those charges have not been filed, the
24 cross reference under felon in possession of a firearm would
25 refer the sentencing court to attempted first degree murder and

1 would come in at the very top of the guidelines. In fact, it
2 would exceed the guideline sentencing chart. Those charges
3 have not yet been filed with state court, but they include
4 attempted murder, assaulting a police officer, aggravated
5 assault with a deadly weapon, and a firearm enhancement. The
6 United States is keeping the felon in possession; it would also
7 include tampering with evidence and a slew of lesser crimes.

8 For all these reasons, your Honor, we think that he
9 is very much a danger to the community and a flight risk, and
10 we concur with the recommendation of Pretrial Services that
11 there are no factors that can be fashioned to ensure his future
12 appearance in court and the safety of the community.

13 **MR. ROBERT:** May I respond briefly, your Honor?

14 **THE COURT:** Yes.

15 **MR. ROBERT:** A great number of these things that the
16 Government has mentioned either were dismissed -- did not
17 result in a conviction. And I -- I object to the notion that
18 anything -- any time somebody is arrested it means they're
19 convicted. The idea that each of these encounters with law
20 enforcement indicates the guilt of Mr. Lyman of some offense I
21 think offends constitutional notions. I would ask your Honor
22 to keep in mind, to consider that reality in this, and that
23 those things of which he was charged and did -- which did not
24 result in convictions should be considered, if at all, in a
25 very limited way.

1 **THE COURT:** All right. Well, although Mr. Lyman is
2 charged with felon in possession of a firearm in this court,
3 the Court is free to and obligated to consider the totality of
4 the circumstances before it in determining whether there are
5 any conditions that can be fashioned to adequately manage the
6 risk of nonappearance and dangerousness that Mr. Lyman poses
7 based on both the -- the circumstances surrounding the charges
8 for which I found probable cause, as well as the criminal
9 history that Mr. Lyman has.

10 There are numerous factors indicating that Mr. Lyman
11 poses a risk of nonappearance, not the least of which is the
12 flight that there is some information that Mr. Lyman engaged in
13 on October 21st of 2015. There is also a prior escape charge
14 against Mr. Lyman, the, as I said, attempt to flee at the time
15 of his arrest. There are -- there is at least some history of
16 a failure to comply with previous court orders, as well as some
17 indication of past poor performance under community
18 supervision.

19 There are also factors which indicate that Mr. Lyman
20 poses a risk of danger to the community. The -- in considering
21 the probable cause in this case, the Court was required to
22 consider all of the circumstances, and although Mr. Lyman was
23 not found at the time of his arrest to have possessed the
24 firearm, the circumstances, the proximity of the firearm to the
25 shooting and to the location that Mr. Lyman was eventually

1 found hiding in, the fact that Mr. Lyman was wearing a handcuff
2 on his left arm all tend to indicate at least sufficient
3 evidence to cause a person to objectively and reasonably
4 suspect that Mr. Lyman was involved in the alleged incident
5 involving the officer who was shot.

6 The history that Mr. Lyman presents, the criminal
7 history, conviction history, as well as the arrest history
8 demonstrates that Mr. Lyman has had in his past multiple
9 arrests and convictions involving violent behavior. There is a
10 history of weapons-related offenses, including an arrest as
11 recently as May 30th of this year for felon in possession of a
12 firearm. The fact that there was a weapon involved in the
13 instant offense all demonstrate that Mr. Lyman does pose a risk
14 of danger to the community.

15 Given the totality of the circumstances, I find that
16 there are no set of conditions under which Mr. Lyman could be
17 released that would reasonably assure the safety of the
18 community or that he would not pose a continuing risk of
19 flight. And for that reason, Mr. Lyman, I'm going to remand
20 you to the custody of the United States Marshals Service
21 pending your trial in this matter.

22 **MR. SPEAKER:** Thank you, your Honor.

23 **THE COURT:** Okay? All right. Is there anything
24 further?

25 **MR. WISHARD:** No, your Honor. Thank you.

MR. ROBERT: No, your Honor.

(Proceeding was adjourned at 10:50 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

December 15, 2015

TONI HUDSON, TRANSCRIBER